

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

MICH AUREL, #317239

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Plaintiff,

v.

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CIVIL ACTION NO. ELH-15-2604

M.J. ROSE

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Defendant.

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**MEMORANDUM**

Mich Aurel,<sup>1</sup> the self-represented plaintiff, filed suit against defendant M. J. Rose, an office clerk assigned to the mailroom at the North Branch Correctional Institution (“NBCI”), where Aurel is an inmate. Rose has filed a motion to dismiss or, in the alternative, for summary judgment. ECF 11. It is supported by a memorandum (ECF 11-1) (collectively, the “Motion”), and several exhibits. No opposition has been filed to the Motion, and the time to do so has expired.<sup>2</sup> In ECF 13, Rose has also moved for reconsideration (“Motion to Reconsider”) of the Court’s Order (ECF 6) granting in forma pauperis status to plaintiff.

The court finds a hearing in this matter unnecessary. *See* Local Rule 105.6 (D. Md. 2014). For the reasons that follow, defendant’s Motion (ECF 11), construed as a motion for

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<sup>1</sup> The Maryland Department of Public Safety and Correctional Services (“DPSCS”) lists plaintiff as Mich Aurel on its “inmate locator” website. Although plaintiff was prosecuted as Aurel Mich in the Maryland courts, I will use the DPSCS designation of Mich Aurel.

<sup>2</sup> Pursuant to the dictates of *Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 1975), on February 4, 2016, Aurel was notified that defendant had filed a dispositive motion, the granting of which could result in the dismissal of his case. ECF 12. He was also informed that he was entitled to file an opposition to the motion within seventeen days from the date of that letter, as well as exhibits, and that his failure to file a timely response could result in the dismissal of his case or the entry of judgment against him, without further notice of the court. *Id.*

summary judgment, shall be granted. But, I shall deny defendant's Motion to Reconsider (ECF 13).

### **I. Background**

Aurel, a NBCI inmate, alleges that throughout 2015 his mail to courts, out-of-state and overseas family and friends, the media, legislators, lawyers, foreign embassies, and state agencies and administrators was "destroyed" by defendant. Aurel seeks \$1,000,000,000 in damages. ECF 1 at 3-5.<sup>3</sup>

In response to the Complaint, defendant maintains that all incoming and outgoing mail is processed in accordance with approved policies and directives of the Maryland Department of Public Safety and Correctional Services ("DPSCS"). Rose asserts that at no time has she withheld, delayed, destroyed or failed to process Aurel's mail and that legal mail is logged for record-keeping purposes. ECF 11-3, Rose Decl.

Defendant also alleges that there is no record that Aurel filed a grievance through the administrative remedy procedure ("ARP") regarding his mail, nor did he appeal an ARP decision to the Inmate Grievance Office ("IGO"). ECF 11-6, Ripps Decl.; ECF 11-7, Neverdon Decl. In particular, Christina Ripps, a Correctional Case Manager Specialist, explains that an inmate's appeal of the disposition of a grievance is sent to DPSCS headquarters. She has not located any appeal by Aurel for the year 2015. ECF 11-6 at 1. Moreover, Russell Neverdon, Sr., Executive Director of the Inmate Grievance Office, reviewed IGO records and located two grievance

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<sup>3</sup> All docket references are made to the electronic pagination.

appeals filed by Aurel concerning the mail, but both were filed in 2014. ECF 11-7 at 1-2. As noted, this case concerns the handling of Aurel's mail in 2015. *See* ECF 1 at 3-4.

Defendant also provided an "Individual ARP Index Report" for Aurel (ECF 11-5), which indicates that from January through November of 2015, Aurel filed 31 ARPs. But, not one of these grievances concerned Aurel's mail. *Id.* Therefore, defendant argues that Aurel's claims are barred for failure to exhaust administrative remedies.

## **II. Standard of Review**

Defendant's motion is styled as a motion to dismiss under Fed. R. Civ. P. 12(b)(6) or, in the alternative, for summary judgment under Fed. R. Civ. P. 56. ECF No. 12. A motion styled in this manner implicates the court's discretion under Rule 12(d) of the Federal Rules of Civil Procedure. *See Kensington Vol. Fire Dept., Inc. v. Montgomery County*, 788 F. Supp. 2d 431, 436-37 (D. Md. 2011). Ordinarily, a court "is not to consider matters outside the pleadings or resolve factual disputes when ruling on a motion to dismiss." *Bosiger v. U.S. Airways*, 510 F.3d 442, 450 (4th Cir. 2007). However, under Rule 12(b)(6), a court, in its discretion, may consider matters outside of the pleadings, pursuant to Rule 12(d). If the court does so, "the motion must be treated as one for summary judgment under Rule 56," and "[a]ll parties must be given a reasonable opportunity to present all the material that is pertinent to the motion." Fed. R. Civ. P. 12(d). When, as here, the movant expressly captions its motion "in the alternative," as one to dismiss or for summary judgment, and submits matters outside the pleadings for the court's consideration, the parties are deemed to be on notice that conversion under Rule 12(d) may

occur; the court “does not have an obligation to notify parties of the obvious.” *Laughlin v. Metro. Wash. Airports Auth.*, 149 F.3d 253, 261 (4th Cir. 1998).<sup>4</sup>

A district judge has “complete discretion to determine whether or not to accept the submission of any material beyond the pleadings that is offered in conjunction with a Rule 12(b)(6) motion and rely on it, thereby converting the motion, or to reject it or simply not consider it.” 5C WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE § 1366, at 159 (3d ed. 2004, 2011 Supp.). This discretion “should be exercised with great caution and attention to the parties’ procedural rights.” *Id.* at 149. In general, courts are guided by whether consideration of extraneous material “is likely to facilitate the disposition of the action,” and “whether discovery prior to the utilization of the summary judgment procedure” is necessary. *Id.* at 165-67.

Ordinarily, summary judgment is inappropriate “where the parties have not had an opportunity for reasonable discovery.” *E.I. du Pont De Nemours and Co. v. Kolon Industries, Inc.*, 637 F.3d 435, 448-49 (4th Cir. 2011). However, “the party opposing summary judgment ‘cannot complain that summary judgment was granted without discovery unless that party has made an attempt to oppose the motion on the grounds that more time was needed for discovery.’” *Harrods Ltd. v. Sixty Internet Domain Names*, 302 F.3d 214, 244 (4th Cir. 2002) (quoting *Evans v. Techs. Applications & Serv. Co.*, 80 F.3d 954, 961 (4th Cir. 1996)). To raise

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<sup>4</sup> In contrast, a court may not convert a motion to dismiss to one for summary judgment *sua sponte*, unless it gives notice to the parties that it will do so. *See Laughlin*, 149 F.3d at 261 (stating that a district court “clearly has an obligation to notify parties regarding any court-instituted changes” in the posture of a motion, including conversion under Rule 12(d)); *Finley Lines Joint Protective Bd. Unit 200 v. Norfolk So. Corp.*, 109 F.3d 993, 997 (4th Cir. 1997) (“[A] Rule 12(b)(6) motion to dismiss supported by extraneous materials cannot be regarded as one for summary judgment until the district court acts to convert the motion by indicating that it will not exclude from its consideration of the motion the supporting extraneous materials.”).

adequately the issue that discovery is needed, the non-movant typically must file an affidavit or declaration pursuant to Rule 56(d) (formerly Rule 56(f)), explaining why, “for specified reasons, it cannot present facts essential to justify its opposition,” without needed discovery. Fed. R. Civ. P. 56(d); *see Harrods*, 302 F.3d at 244-45 (discussing affidavit requirement of former Rule 56(f))

“[T]o justify a denial of summary judgment on the grounds that additional discovery is necessary, the facts identified in a Rule 56 affidavit must be ‘essential to [the] opposition.’” *Scott v. Nuvel Fin. Servs., LLC*, 789 F. Supp. 2d 637, 641 (D. Md. 2011) (alteration in original) (citation omitted). A non-moving party’s Rule 56(d) request for additional discovery is properly denied “where the additional evidence sought for discovery would not have by itself created a genuine issue of material fact sufficient to defeat summary judgment.” *Strag v. Bd. of Trs., Craven Cmty. Coll.*, 55 F.3d 943, 954 (4th Cir. 1995); *see Amirmokri v. Abraham*, 437 F. Supp. 2d 414, 420 (D. Md. 2006), *aff’d*, 266 F. App’x. 274 (4th Cir.), *cert. denied*, 555 U.S. 885 (2008).

If a non-moving party believes that further discovery is necessary before consideration of summary judgment, the party fails to file a Rule 56(d) affidavit at his peril, because “‘the failure to file an affidavit ...is itself sufficient grounds to reject a claim that the opportunity for discovery was inadequate.’” *Harrods*, 302 F.3d at 244 (citations omitted). But, the non-moving party’s failure to file a Rule 56(d) affidavit cannot obligate a court to issue a summary judgment ruling that is obviously premature. Although the Fourth Circuit has placed “‘great weight’” on the Rule 56(d) affidavit, and has said that a mere “‘reference to Rule 56(f) [now Rule 56(d)] and the need for additional discovery in a memorandum of law in opposition to a motion for

summary judgment is not an adequate substitute for [an] affidavit,” the appellate court has “not always insisted” on a Rule 56(d) affidavit. *Id.* (internal citations omitted). According to the Fourth Circuit, failure to file an affidavit may be excused “if the nonmoving party has adequately informed the district court that the motion is premature and that more discovery is necessary,” and the “nonmoving party’s objections before the district court ‘served as the functional equivalent of an affidavit.’” *Id.* at 244-45 (internal citations omitted).

Plaintiff has not filed an affidavit under Rule 56(d). In light of the foregoing, I am satisfied that it is appropriate to address the defendant’s Motion as one for summary judgment, as this will facilitate resolution of the case.

Summary judgment is governed by Fed. R. Civ. P. 56(a), which provides, in part: “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” The Supreme Court has clarified that this does not mean that any factual dispute will defeat the motion: “By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U. S. 242, 247-48 (1986) (emphasis in original).

“The party opposing a properly supported motion for summary judgment ‘may not rest upon the mere allegations or denials of [his] pleadings,’ but rather must ‘set forth specific facts showing that there is a genuine issue for trial.’” *Bouchat v. Baltimore Ravens Football Club, Inc.*, 346 F.3d 514, 525 (4th Cir. 2003) (alteration in original) (quoting Fed. R. Civ. P. 56(e)), *cert. denied*, 541 U.S. 1042 (2004). The court should “view the evidence in the light most

favorable to . . . the nonmovant, and draw all inferences in her favor without weighing the evidence or assessing the witness' credibility." *Dennis v. Columbia Colleton Med. Ctr., Inc.*, 290 F.3d 639, 644-45 (4th Cir. 2002); *see FDIC v. Cashion*, 720 F.3d 169, 173 (4th Cir. 2013).

The district court's "function" is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249. Moreover, the trial court may not make credibility determinations on summary judgment. *Jacobs v. N.C. Administrative Office of the Courts*, 780 F.3d 562, 569 (4th Cir. 2015); *Mercantile Peninsula Bank v. French*, 499 F.3d 345, 352 (4th Cir. 2007); *Black & Decker Corp. v. United States*, 436 F.3d 431, 442 (4th Cir. 2006); *Dennis*, 290 F.3d at 644-45. Therefore, in the face of conflicting evidence, such as competing affidavits, summary judgment is generally not appropriate, because it is the function of the fact-finder to resolve factual disputes, including matters of witness credibility.

Nevertheless, to defeat summary judgment, conflicting evidence, if any, must give rise to a *genuine* dispute of material fact. *See Anderson*, 477 U.S. at 247-48. If "the evidence is such that a reasonable jury could return a verdict for the nonmoving party," then a dispute of material fact precludes summary judgment. *Id.* at 248; *see Libertarian Party of Va. v. Judd*, 718 F.3d 308, 313 (4th Cir. 2013). On the other hand, summary judgment is appropriate if the evidence "is so one-sided that one party must prevail as a matter of law." *Id.* at 252. And, "the mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Id.*

Because plaintiff is self-represented, his submissions are liberally construed. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007). But, the court must also abide by the "affirmative

obligation of the trial judge to prevent factually unsupported claims and defenses from proceeding to trial.” *Bouchat*, 346 F.3d at 526 (internal quotation marks omitted) (quoting *Drewitt v. Pratt*, 999 F.2d 774, 778–79 (4th Cir. 1993), and citing *Celotex Corporation v. Catrett*, 477 U.S. 317, 323–24 (1986)).

### **III. Discussion**

Defendant argues that Aurel’s claim must be dismissed because he has failed to exhaust available administrative remedies, as required by the Prison Litigation Reform Act of 1995 (“PLRA”), 110 Stat. 1321-71, as amended, 42 U.S.C. § 1997e(a). Exhaustion of administrative remedies is an affirmative defense, which is most properly considered on a motion for summary judgment. *See Jones v. Bock*, 549 U.S. 199, 216 (2007).

The Prisoner Litigation Reform Act provides, in pertinent part:

(a) Applicability of administrative remedies

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. §1997e.

For purposes of the PLRA, “the term ‘prisoner’ means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.” 42 U.S.C. § 1997e(h). The phrase “prison conditions” encompasses “all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong.” *Porter v. Nussle*, 534 U.S. 516, 532 (2002).



Notably, administrative exhaustion under § 1997e(a) is not a jurisdictional requirement and does not impose a heightened pleading requirement on the prisoner. Rather, the failure to exhaust administrative remedies is an affirmative defense to be pleaded and proven by defendants. *See Jones v. Bock*, 549 U.S. at 215-216; *Anderson v. XYZ Correctional Health Services, Inc.*, 407 F.2d 674, 682 (4th Cir. 2005).

The PLRA's exhaustion requirement serves several purposes. These include "allowing a prison to address complaints about the program it administers before being subjected to suit, reducing litigation to the extent complaints are satisfactorily resolved, and improving litigation that does occur by leading to the preparation of a useful record." *Jones*, 549 U.S. at 219; *see Moore*, 517 F. 3d at 725 (exhaustion means providing prison officials with the opportunity to respond to a complaint through proper use of administrative remedies). It is designed so that prisoners pursue administrative grievances until they receive a final denial of the claims, appealing through all available stages in the administrative process. *Chase v. Peay*, 286 F.Supp.2d 523, 530 (D. Md. 2003), *aff'd* 98 Fed. Appx. 253 (4th Cir., 2004); *Gibbs v. Bureau of Prisons*, 986 F.Supp. 941, 943-44 (D. Md. 1997) (dismissing a federal prisoner's lawsuit for failure to exhaust, where plaintiff did not appeal his administrative claim through all four stages of the BOP's grievance process); *see also Booth v. Churner*, 532 U.S. 731, 735 (2001) (affirming dismissal of prisoner's claim for failure to exhaust where he "never sought intermediate or full administrative review after prison authority denied relief"); *Thomas v. Woolum*, 337 F.3d 720, 726 (6th Cir. 2003) (noting that a prisoner must appeal administrative rulings "to the highest possible administrative level"); *Pozo v. McCaughtry*, 286 F.3d 1022, 1024 (7th Cir. 2002)

(prisoner must follow all administrative steps to meet the exhaustion requirement, but need not seek judicial review).

Ordinarily, an inmate must follow the required procedural steps in order to exhaust his administrative remedies. *Moore v. Bennette*, 517 F.3d 717, 725, 729 (4th Cir. 2008); see *Langford v. Couch*, 50 F.Supp.2d 544, 548 (E.D. Va. 1999) (“[T]he PLRA amendment made clear that exhaustion is now mandatory.”). But, this court is “obligated to ensure that any defects in administrative exhaustion were not procured from the action or inaction of prison officials.” *Aquilar-Avellaveda v. Terrell*, 478 F.3d 1223, 1225 (10th Cir. 2007); see *Kaba v. Stepp*, 458 F.3d 678, 684 (7th Cir. 2006).

An inmate need only exhaust “available” remedies. 42 U.S.C. § 1997e(a). In *Ross v. Blake*, \_\_\_\_ U.S. \_\_\_\_, 2016 WL 3128839 (June 6, 2016), the Supreme Court rejected a “freewheeling approach to exhaustion as inconsistent with the PLRA.” *Id.* at \*3. In particular, it rejected a “special circumstances” exception to the exhaustion requirement. *Id.* at \*5. But, it reiterated that “[a] prisoner need not exhaust remedies if they are not ‘available.’” *Id.* at \*3.

The Fourth Circuit has addressed the meaning of “available” remedies in *Moore v. Bennette*, 517 F. 3d at 725, stating:

[A]n administrative remedy is not considered to have been available if a prisoner, through no fault of his own, was prevented from availing himself of it. See *Aquilar-Avellaveda v. Terrell*, 478 F. 3d 1223, 1225 (10th Cir. 2007); *Kaba v. Stepp*, 458 F. 3d 678, 684 (7th Cir. 2006). Conversely, a prisoner does not exhaust all available remedies simply by failing to follow the required steps so that remedies that once were available to him no longer are. See *Woodford v. Ngo*, 548 U.S. 81, 89 (2006). Rather, to be entitled to bring suit in federal court, a prisoner must have utilized all available remedies “in accordance with the applicable procedural rules,” so that prison officials have been given an opportunity to address the claims administratively. *Id.* at 87. Having done that, a prisoner has

exhausted his available remedies, even if prison employees do not respond. *See Dole v. Chandler*, 438 F.3d 804, 809 (7th Cir. 2006).

More recently, in *Ross v. Blake*, the Supreme Court stated that an administrative remedy is available if it is “‘capable of use’ to obtain ‘some relief for the action complained of.’” *Ross v. Blake*, *supra*, 2016 WL 3218839, at \*7 (June 6, 2016) (quoting *Booth v. Churner*, 532 U.S. 731, 738 (2001)). An administrative remedy is not available “if a prisoner, through no fault of his own, was prevented from availing himself of it.” *Moore v. Bennette*, 517 F.3d at 725. Thus, an inmate must complete the prison’s internal appeals process, if possible, before bringing suit. *Chase v. Peay*, 286 F. Supp. 2d 523, 529-30 (D. Md. 2003), *aff’d*, 98 F. App’x 253 (4th Cir. 2004) (requiring that Maryland prisoners appeal up to the Inmate Grievance Office).

The Maryland Department of Public Safety and Correctional Services has made an “administrative remedy procedure” available to Maryland State prisoners, within the meaning of 42 U.S.C. § 1997e(a), for the submission of “grievance[s] against . . . official[s] or employee[s] of the Division of Correction.” Md. Code, Correctional Services Article (“C.S.”) § 10-206(a); *see generally* C.S. §§ 10-201 *et seq.*; Code of Maryland Regulations (“COMAR”) 12.07.01.01(B)(1) (defining ARP). Regulations promulgated by DPSCS concerning the administrative remedy procedure define a “grievance” to include a “complaint of any individual in the custody of the [DOC] . . . against any officials or employees of the [DOC] . . . arising from the circumstances of custody or confinement.” COMAR 12.07.01.01B(8).<sup>5</sup> An inmate “must

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<sup>5</sup> Maryland appellate case law indicates that the administrative grievance procedure does not encompass “‘every kind of civil matter that could be brought by a DOC inmate.’” *Massey v. Galley*, 392 Md. 634, 646, 898 A.2d 951, 958 (2006) (citation omitted). Rather, it applies only to matters that “relate to or involve a prisoner’s ‘conditions of confinement.’” *Id.* at 651, 898 A.2d at 960 (citation omitted). Thus, the grievance procedure does not apply to requests for

exhaust” the ARP process as a condition precedent to further review of the inmate’s grievance. *See* C.S. § 10-206(b); *see also* COMAR 12.07.01.02.D; DCD 185-002 (effective August 27, 2008). Exhaustion requires completion of “the administrative review process in accordance with the applicable procedural rules, including deadlines.” *Woodford v. Ngo*, 548 U.S. 81, 88, 93 (2006).

In Maryland, filing a request for administrative remedy with the warden of the prison is the first of three steps in the ARP process. *See* COMAR 12.07.01.04. The ARP request must be filed within 30 days of the date on which the incident occurred, or within 30 days of the date the inmate first gained knowledge of the incident or injury giving rise to the complaint, whichever is later. COMAR 12.07.01.05A. If the request is denied, a prisoner has 30 calendar days to file an appeal with the Commissioner of Correction. COMAR 12.07.01.05C. If the appeal is denied, the prisoner has 30 days to file a grievance with the Inmate Grievance Office. *See* C.S. §§ 10-206, 10-210; COMAR 12 07.01.03; COMAR 12.07.01.05B. *See also Division of Correction Directive* 185-002, § VI.NI.

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public information under the Maryland Public Information Act, *see id.*, nor does it apply to medical malpractice claims against private medical service providers who treat inmates under contract with the DOC. *See Abramson v. Correctional Med. Servs., Inc.*, 359 Md. 238, 753 A.2d 501 (2000).

Moreover, the administrative grievance procedure does not apply to claims for compensation for disabilities resulting from “personal injury arising out of and in the course of [an inmate’s] work for which wages or a stipulated sum of money was paid by a correctional facility,” C.S. § 10-304, for which a claim to a different administrative body, the Sundry Claims Board, is the exclusive remedy. *See Dixon v. DPSCS*, 175 Md. App. 384, 927 A.2d 445 (2007). On the other hand, the grievance process does apply to a wide variety of claims that arise out of the conditions of confinement, even if the grievance process cannot provide a comprehensive remedy for such claims, such as tort claims of assault and battery against prison officers. *See McCullough v. Wittner*, 314 Md. 602, 552 A.2d 881 (1989).

Complaints are reviewed preliminarily by the IGO. *See* C.S. § 10-207; COMAR 12.07.01.06A. If the complaint is determined to be “wholly lacking in merit on its face,” the IGO may dismiss it without a hearing. C.S. § 10-207(b)(1); *see* COMAR 12.07.01.07B. The order of dismissal constitutes the final decision of the Secretary of DPSCS for purposes of judicial review. C.S. § 10-207(b)(2)(ii). However, if a hearing is deemed necessary by the IGO, the hearing is conducted by an administrative law judge with the Maryland Office of Administrative Hearings. *See* C.J. § 10-208(c); COMAR 12.07.01.07-.08. The conduct of such hearings is governed by statute. C.S. § 10-208.

A decision of the administrative law judge denying all relief to the inmate is considered a final agency determination. However, a decision concluding that the inmate’s complaint is wholly or partly meritorious constitutes a recommendation to the Secretary of DPSCS, who must make a final agency determination within fifteen days after receipt of the proposed decision of the administrative law judge. *See* C.S. § 10-209(b)-(c).

The final agency determination is subject to judicial review in Maryland State court, so long as the claimant has exhausted his/her remedies. *See* C.S. § 10-210. But, an inmate need not seek judicial review in State court in order to satisfy the PLRA’s administrative exhaustion requirement. *See, e.g., Pozo v. McCaughtry*, 286 F.3d 1022, 1024 (7th Cir.) (“[A] prisoner who uses all administrative options that the state offers need not also pursue judicial review in state court.”), *cert. denied*, 537 U.S. 949 (2002).

Aurel’s Complaint lists approximately forty instances in which he claims that his outgoing mail was destroyed or mishandled in 2015. He also states that his grievance was destroyed by a correctional officer. ECF 1 at 2. Even assuming this to be true, he does not

refute the uncontroverted record: he filed over thirty ARPs throughout the course of 2015, and he did not grieve the claims raised here at the institution or appeal levels. ECF 11-5; 11-6, and 11-7. As such, the allegations raised in this Complaint may not proceed, as Aurel has plainly failed to exhaust administrative remedies as to those issues. Aurel's claims against the defendant are therefore dismissed.

As noted, Rose has also filed a Motion to Reconsider this Court's decision to grant Aurel's indigency motion. ECF 13. To be sure, Aurel has had three cases dismissed under 28 U.S.C. § 1915(e). *See Mich v. Nice, et al.*, Civil Action No. JKB-14-1397 (D. Md.); *Aurel v. Gainer, et al.*, ELH-15-1750 (D. Md.); and *Aurel v. Jones, et al.*, ELH-15-1928 (D. Md.). Nonetheless, I shall deny the Motion to Reconsider and shall dismiss the case for the reasons set forth above.

A separate Order follows.

Date: June 16, 2016

\_\_\_\_\_/s/\_\_\_\_\_  
Ellen L. Hollander  
United States District Judge